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Lancaster County, NE Assessor/Register of Deeds Office AGRMT  
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**DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT**

This Development and Conditional Zoning Agreement is hereby made and entered into this 2<sup>nd</sup> day of October, 2007, by and between Safe Harbour Eat - XVII, L.L.C., a Kansas limited liability company, hereinafter referred to as "Developer," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

**RECITALS**

I.

Developer has petitioned the City for a change of zone (No. 07048) from H-3 Highway Commercial District to I-1 Industrial District upon the following described property generally located west of NW 27th Street adjacent to the north side of West O Street and the south side of I-80 ("Property"). The Property is legally described as:

Lot 5, Block 1, and Lots 2 through 9, Block 2, I-80 Business Park Addition, Lincoln, Lancaster County, Nebraska.

II.

The request for the change of zone to I-1 Industrial District will allow the Property to be used for a range of industrial uses as a permitted special use which would not be compatible with the adjacent properties.

III.

The Developer has represented to the City that in consideration of the City rezoning the Property to I-1 Industrial District, the Developer will enter into an agreement with the City

*Joan Ross - City Clerk*

subjecting the Property to restrictions on use and landscaping in order to provide a compatible development with the surrounding area.

#### IV.

The City desires the Developer to enter into this Agreement to be assured that the Developer will develop the Property as represented should the Property be rezoned to I-1 Industrial District.

NOW, THEREFORE, in consideration of the above Recitals and the following terms and conditions, the parties agree as follows:

1. The City hereby agrees to grant Developer's petition to change the zoning map from H-3 Highway Commercial District to I-1 Industrial District on the Property.

2. In consideration of the City's rezoning the Property to I-1 Industrial District, the Developer agrees that development of the Property will be subject to the following restrictions:

a. Use Restrictions. The following uses are prohibited:

- (1) The refining, distillation or manufacture of:
  - A. Acids or alcohols;
  - B. Ammonia, bleach, or chlorine;
  - C. Asphalt, tar, or products made therewith, including roofing or waterproofing;
  - D. Cement, lime, gypsum, or plaster of paris;
  - E. Disinfectants;
  - F. Dyestuffs;
  - G. Fertilizer;
  - H. Glue, sizing, or gelatin;
  - I. Oilcloth, linoleum, or oiled rubber goods;
  - J. Paint, shellac, turpentine, or oils;
  - K. Rubber, gutta-percha, balata, creosote, or products treated therewith;
  - L. Shoe polish;
  
- (2) The operation of:
  - A. Bag cleaning works;
  - B. Blast furnaces, coke ovens, smelting or ore reduction works;
  - C. Boiler works;
  - D. Forge;
  - E. Rock crusher, stone mill, or quarry;
  - F. Rolling mill;
  - G. Yeast plant;

- (3) Production, manufacture, distribution, and storage of toxic, radioactive, flammable, or explosive materials, including chemicals and gases, fireworks, and explosives, except that any of the above referenced uses, except fireworks, may be stored or used in connection with a permitted commercial, business, or industrial purpose as allowed by Section 27.47.020(b) as incidental to the referenced permitted use without the requirement of obtaining a special permit;
- (4) Tanning, curing, or storage of raw hides or skins; stockyards or slaughter of animals or fowl; rendering fat; distillation of bones, coal or wood;
- (5) Dumping or reduction of garbage, offal, or dead animals;
- (6) Scrap processing operation, salvage yard, or enclosed disassembly operation in conformance with Section 27.63.500;
- (7) Refining or bulk storage of petroleum or natural gas, or their products;
- (8) The manufacture of acetylene, the transfer of the gas from one container to another, or the storage of the gas in containers having a capacity greater than the equivalent of 1,000 cubic feet at standard temperature and pressure;
- (9) Any permitted use which exceeds the maximum height permitted in the district;
- (10) Broadcast towers;
- (11) Wind energy conversion systems;

3. In further consideration for the City rezoning the Property to I-1 Industrial District, the Developer agrees to plant an additional 23 dogwood shrubs along I-80 in addition to the plants shown on the landscape plan approved for the final plat of I-80 Business Park Addition.

4. This Agreement shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns.

5. This Agreement, when executed by the parties hereto, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska, filing fees to be paid by Developer.

IN WITNESS WHEREOF the parties herein have executed this Agreement on the day and year set forth above.

SAFE HARBOUR EAT - XVII, L.L.C.  
a Kansas limited liability company

By: R Kent Radke  
Name: R. Kent Radke  
Member

ATTEST:

Jan E Ross  
City Clerk

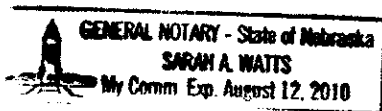


CITY OF LINCOLN, NEBRASKA  
a municipal corporation

Chris Beutler  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
                                          ) ss.  
COUNTY OF LANCASTER    )

The foregoing Agreement was acknowledged before me this 26 day of September 2007, by R. Kent Radke, member of Safe Harbour Eat - XVII, L.L.C., a Kansas limited liability company, on behalf of said limited liability company.



Sarah A. Watts  
Notary Public

STATE OF NEBRASKA     )  
                                          ) ss.  
COUNTY OF LANCASTER    )

The foregoing Agreement was acknowledged before me this 2nd day of October, 2007, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



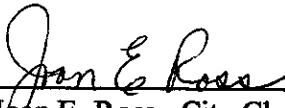
Judith A. Roscoe  
Notary Public

CERTIFICATE

STATE OF NEBRASKA )  
 )  
COUNTY OF LANCASTER ) ss:  
 )  
CITY OF LINCOLN )

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, hereby certify that the foregoing is a true and correct copy of the **Development and Conditional Zoning Agreement between Safe Harbour Eat - XVII, L.L.C. as adopted and approved by the Lincoln City Council on September 24, 2007**, as the original appears of record on file in my said office.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, on October 2, 2007.

  
Joan E. Ross, City Clerk



Return filed document to City Clerk